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OFFICE OF PETITIONS

In re Application of :
Sanders et al. :
Application No. 09/966,551 : DECISION GRANTING
Filed: 26 September, 2001 : PETITION
Attorney's Docket No. 26272/04003 :

This is a decision on the renewed petition filed on 23 May, 2002, under 37 CFR 1.53 to accord the above-identified application a filing date of 26 September, 2001, including two (2) pages containing 11 claims as a part of the initial disclosure.

The petition is **GRANTED**.

On 26 September, 2001, the application was deposited. Accordingly, on 26 October, 2001, Initial Patent Examination Division mailed a Notice of Incomplete Nonprovisional Application, stating that, *inter alia*, the application was incomplete because the specification does not include at least one claim, and that the filing date will be the date of receipt of at least one claim. In response, on 7 November, 2001, petitioners filed a petition accompanied by, *inter alia*, two (2) pages containing 11 claims.¹ The petition filed on 7 November, 2001, was dismissed on 7 March, 2002.

In the present renewed petition, petitioners again assert that the two (2) pages containing 11 claims were present on filing on 26 September, 2001. In support, petitioners supplied with the present petition, a copy of a postcard receipt itemizing the

¹A duplicate copy of the petition and accompanying documentation was filed by facsimile on 1 February, 2002.

filing of, *inter alia*, 36 pages of a "Utility Patent Application and Drawings." The postcard, which identifies the application by first named inventor's last name (misspelled), invention title, and attorney docket number, bears a USPTO Office-date stamp of "09/26/01" which also contains the above-identified application number.

It is noted that the postcard receipt, an unstamped copy of which was filed with the original petition on 7 November, 2001, shows that the original, typed number "Utility Patent Application and Drawings" was 22 pages. That number was lined-through, and the number "36" was handwritten below. Petitioners explain that the application as filed had 21 pages of specification, claims, and abstract (the postcard inadvertently identified 22 pages of specification, claims, and abstract), and that counsel amended the postcard receipt by hand prior to submission to include the 14 sheets of drawings. As such, the application as filed, states petitioner's counsel in the petition filed on 7 November, 2001, consisted of a total 35 pages, including the sheets of drawings.

A review of the official record reveals that 18 pages of description, one (1) page of abstract, and 14 sheets of drawings received on 26 September, 2001, are located therein. Since the individual at the USPTO who compared petitioner's postcard to the items received found that the specification, claims, abstract, and drawings as filed contained at least 36 pages, the evidence is persuasive that two (2) pages of claims were among the application papers received on 26 September, 2001, but was subsequently misplaced in the U.S. Patent and Trademark Office. The application, including two (2) pages containing 11 claims, is therefore entitled to a filing date of 26 September, 2001.

Petitioners are cautioned that, in future filings, the postcard receipt should separately itemize each part of the application being filed (number of pages of specification including claims, number of claims, number of sheets of drawings, number of figures of drawings, etc.).

The application will be reprocessed with a filing date of 26 September, 2001, using the application papers filed on 26 September, 2001, and the two (2) pages containing 11 claims supplied on 7 November, 2001. The copies of application papers filed with the present renewed petition will not be used for processing or examination, but will be retained in the application file.

No fee is due with the present renewed petition.

The application is being returned to the Office of Initial Patent Examination for reprocessing with a filing date of 26 September, 2001, using the application papers deposited on 26 September, 2001, and the two (2) pages containing 11 claims supplied on 1 November, 2001. Thereafter, the application will be forwarded to Technology Center 3600 for examination in due course.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.



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